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Agency Beware: False Advertising Liability Applies to Agencies Too



The Federal Trade Commission (FTC) and the State of  recently delivered yet another "[gut check](#)" to

businesses engaging in weight loss advertising,  obtaining a \$2 million dollar [settlement](#)

against an advertising agency related to allegedly false claims. While challenges related to weight loss claims and related offers are all too familiar for brands, this settlement serves as a heavy reminder to ad agencies that they can also be held responsible for false advertising. In its [complaint](#) against Marketing Architects Inc. (MAI), the FTC and Maine alleged that radio ads created and disseminated by MAI for its client, Direct Alternatives (the maker of Puranol, Pur-Hoodia Plus, PH Plus, Acai Fresh, AF Plus, and Final Trim) made a number of (1) false or unsubstantiated weight loss claims; (2) false or inadequately-disclosed "free trial" claims; and (3) false testimonials or ads disguised as testimonials. In addition, MAI allegedly created certain inbound call scripts that failed to sufficiently disclose that the caller would be automatically enrolled in a continuity (recurring billing) plan. This action followed a [2016 FTC settlement](#) with Direct Alternatives for similarly deceptive weight loss and free trial claims. The [order](#) prohibits MAI from making the seven weight loss claims that the FTC identified in its [Gut Check: A Reference Guide for Media on Spotting False Weight Loss Claims](#) as false and misleading for dietary supplements. The order also prohibits misrepresenting information about returns and cancellations, free trials, and recurring-billing subscriptions, among other restrictions. The MAI settlement serves only as the most recent example of an ad agency found liable -- and the FTC seemingly provides periodic reminders to keep agencies accountable. For example, in 2014, the FTC settled an action against Nissan North America and its advertising agency [TBWA Worldwide, Inc.](#) for allegedly deceptive (and very engaging) [product demonstrations](#) of a truck climbing a sand dune. **Key Takeaways:**

- While brands are typically the target of FTC actions, false advertising standards apply equally to ad agencies.
- Brands should work closely with their agencies to create strong compliance processes and identify potentially misleading claims -- and agencies should not assume that brands will identify, vet, and *choose* to modify potentially deceptive or misleading claims.
- Weight loss and health claims continue to be a priority for regulators and must be vetted carefully to confirm there is sufficient scientific evidence to support the claims.

Authors

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